IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3562 OF 2007

1.Yogini Ramchandra Rabade & ors. ...Petitioners

vs.

1.Pune Mathadi, Hamal & other
Manual Workers Board & another. ...Respondents.

Mr.V.P.Sawant, for Petitioners.

Mr.M.S.Topkar, for Respondent no.1.

Mr.A.H.Palekar, AGP for Respondent no.2.

CORAM: D.K.DESHMUKH &

V.M.KANADE, JJ.

DATED: 29th NOVEMBER,2007.

P.C.:-

1. By this petition, the petitioners who are under the employment of respondent no.1 Board make grievance principally against the order

dated 28.2.2007. By that order, it is held that the pay scale which was given to them from 1.10.1994 was wrongly given and they are not entitled to that pay scale and that from that date i.e. 1.10.1994 they were entitled to lesser scale of pay, and therefore, accordingly, their scale of pay has been reduced from 1.10.1994 and the amount paid in excess is ordered to be recovered. The grievance of the petitioners is that this order for fixation of their scale of pay in lower grade and for recovery, has been made without giving them an opportunity of being heard. According to the respondent no.1, they have not made the order on their own. The accounts of the respondent no.1 Board are required to be statutorily audited by the auditor appointed by respondent no.2 State Government. The auditor appointed by the State Government raised an objection that the pay scale of the petitioners has been wrongly fixed in the scale of 2000-60-2300-75-3200 from 1.10.1994 and that

their scale of pay should have been fixed in the scale of Rs.1640-60-2600-75-2900. It is only to comply with the audit objection, the respondent no.1 has made the order dated 28.2.2007. According to the petitioners, the office objection has been wrongly raised and that the scale of pay of the petitioners was rightly fixed. The learned Counsel appearing for petitioners submits that had the Board before making the order dated 28.2.2007 pointed out the objection raised by the Auditor to the petitioners, the petitioners could have submitted their point of view for consideration before the Auditor and then the Auditor could have made the order after considering the point of view of the petitioners. The learned Counsel submits that the order impugned in the petition visits the petitioners with penal consequences, and therefore, they are entitled to an opportunity of being heard before such an order is made.

2. Heard the learned Counsel appearing for both the side. Taking overall view of the matter therefore, and specially considering that the order which is impugned in the petition has admittedly been made without giving an opportunity of being heard, in our opinion, the following order would meet the ends of justice:-

(i) Within a period of two weeks from today, the petitioners shall submit their representation alongwith the documents on which they want to rely to respondent no.1 Board. The respondent no.1 – Board shall transmit that representation to the Auditor as also to the State Government for consideration.

(ii) The Auditor or the State Government whichever may be the competent authority shall consider the representation of the petitioners vis-a-vis the audit objection raised by the Auditor and shall make a reasoned order in this

regard, within a period of Eight weeks from the date of receiving the representation from respondent no.1. The Auditor or the State Government shall communicate their decision to the respondent no.1.

(iii) The respondent no.1 Board before making any consequential order, in case the consequential order is likely to be adverse to the interest of the petitioners, shall communicate that order to the petitioners and shall make the consequential order after two weeks of the communication of the order to the petitioners.

(iv) The petitioners shall be free to adopt any remedy that may be available to them under the law against that order. Till then the order dated 28.2.2007 and the consequential order dated 24.3.2007 shall not be given effect.

(D.K.DESHMUKH, J.)

(V.M.KANADE,J.)